

**Briefing: Reconsideration Options for the
Risk Management Plan (RMP) Modernization Rule
Tuesday, October 17, 2017
9:15am – Admin's Office**

Main Topics of Discussion:

Reconsideration Options for the RMP Modernization Rule

Background:

- EPA published the final RMP Modernization Rule with an effective date of March 21, 2017.
- The RMP Modernization Rule was finalized ahead of OSHA's Process Safety Management rule package.
- RMP Modernization Rule's effective date was extended to February 19, 2019 via notice and comment rulemaking - "Delay Rule"
- EPA has received 3 Petitions for Reconsideration of the RMP Modernization Rule under CAA section 307(d) from RMP Coalition" (ACC, AFPA, AFPM, API, U.S. Chamber of Commerce, NAM, UARG); Chemical Safety Advocacy Group (a coalition of various companies from affected sectors); and State Attorneys General (AR, AZ, FL, KS, LA, OK, SC, TX, WV, WI) + KY Governor
- Environmental groups and USW filed a request with the DC Court of Appeals to stay the Delay Rule. The Court denied their request for a stay but granted their request for expedited briefing.
- Given the chemical explosion of the Arkema facility in Texas and the highlighting of the RMP delay rule in the press, OMB asked for a briefing to discuss EPA's reconsideration of the RMP rule and timeframes.

Decision Points/Objectives:

Deliberative Process / Ex. 5

Attendees:

Ryan Jackson, Chief of Staff
Samantha Dravis, AA Office of Policy
Brittany Bolen, Deputy AA, Office of Policy
Veronica Darwin, Senior Advisor, OLEM

Supplemental Materials:

- Full briefing on RMP Modernization Rule Options

RMP Modernization Rule Reconsideration Options Briefing

Deliberative Process / Ex. 5

Background:

Risk Management Plan (RMP) Rule

- Established in response to catastrophic chemical accidents worldwide. Requires owners or operators of stationary sources to prevent accidental releases of regulated substances (authorized in CAA 1990 Amendments under section 112(r)). OSHA has similar requirements under the Process Safety Management (PSM) Program standard.
- Several lawsuits filed re: original RMP Rule; rule was tweaked and EPA settled out of court.
- EPA RMP Rule has been modified multiple times
- Recent catastrophic chemical facility incidents in the U.S., including the West Fertilizer facility explosion in West, Texas, on April 17, 2013, that killed 15 people, were followed by the issuance of EO 13650, Improving Chemical Facility Safety and Security.
- EPA amended the RMP rule in accordance with EO 13650 and published the final RMP Modernization Rule on January 13, 2017.

RMP Modernization Rule (83 FR 4594)

- Original effective date: March 14, 2017
- OSHA is working on a similar rule package. OSHA and DHS had security concerns about data sharing but according to the Program the issues were resolved (there may still be some lingering concerns).
- Effective date extended to March 21, 2017 due to WH Regulatory Freeze Pending Review memo
- Effective date extended to June 19, 2017 for reconsideration proceeding (90-day administrative stay under CAA 307(d))

RMP Delay Rule (82 FR 27133)

Deliberative Process / Ex. 5

Judicial Review, Reconsideration petitions for RMP Modernization Rule: EPA has received 3 Petitions for Reconsideration under CAA section 307(d):

Deliberative Process / Ex. 5

10/02/17

RMP Modernization Rule Reconsideration Options Briefing

Deliberative Process / Ex. 5

Petition for Judicial Review and Request to Stay the RMP Delay Rule:

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Arkema Facility Explosions:

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10/02/17

RMP Modernization Rule Reconsideration Options Briefing

Potential options for reconsideration

1. Rescind final RMP Modernization Rule

Rescind entire rule – basis for rescinding rule could include:

- i. EPA should conduct better and more timely coordination with OSHA Process Safety Management rulemaking and make any future changes in concert with OSHA
- ii. Need to fully address any remaining DHS and Small Business Administration concerns
- iii. Administration's focus on reducing unnecessary regulatory costs/burdens – benefits of rule do not exceed costs; accidental releases were low and declining under existing requirements

2. Rescind portions of rule - develop administrative record to support reversing specific rule provisions – cleanest to draft

i. Rule is made up of six major provisions:

- 1. Third-party compliance audits – **RESCIND**
- 2. Incident Investigations - **RESCIND**
- 3. Safer Technology and Alternatives Analysis (STAA)- **RESCIND**
- 4. Local Emergency Response Coordination - **KEEP**
- 5. Exercises – **KEEP**
- 6. Information Availability to the Public - **RESCIND**

3. Modify portions of the rule – EPA could take a more surgical, issue-by-issue approach to revising specific provisions of the final rule to address petitioner's objections

a. Rule is made up of six major provisions:

i. Third-party compliance audits – **RESCIND**

- 1. It's an entirely new compliance program (applicability, scope, notification and appeals, audit schedule, auditor qualifications, auditor responsibilities, audit report, audit findings, and recordkeeping).
- 2. Many commenters including a Federal agency, a local government agency, industry trade associations, and regulated facilities submitted comments opposing the third-party compliance audit provisions and requested EPA narrow, limit or eliminate these requirements. Issues include: questions re: third-party auditing constitutional law and agency authority issues; security concerns; existing compliance audit requirements/mechanisms are effective; costs outweigh the benefits; focus on enforcing existing compliance audit requirements rather than establishing a whole new compliance audit system; EPA considered and rejected a third party audit requirement when crafting the original RMP rule in 1996 (EPA's James Belke asserted in 2001 that EPA would face "long odds...legally if it attempted to make third-party audits mandatory"); no enforcement data showing audit compliance has become an increased problem.

10/02/17

RMP Modernization Rule Reconsideration Options Briefing

- ii. Incident Investigations – **RESCIND**
 - 1. OSHA PSM standard currently requires incident investigation; RMP Modernization Rule adds prescriptive requirements to investigation (i.e., root cause analysis), reporting (i.e., contents of incident report), and incident investigation completion deadline (i.e., 12 months).
 - 2. Lots of opposition from facilities and industry associations
- iii. Safer Technology and Alternatives Analysis (STAA)- **RESCIND**
 - 1. Rule requires consideration of inherently safer technologies but implementation is not required.
 - 2. National Association of SARA Title III Program Officials commented they do not believe requiring a safer technology analysis is feasible as a regulatory requirement. Fundamental concern is that a safer technology analysis will not prevent accidents. Also quite concerned that the use of safer technology analysis will be used as a substitute for appropriate emergency preparedness and accident prevention programs. Adoption of safer technology without a holistic review of risk transfers might be dangerous.
- iv. Local Emergency Response Coordination – **REVISE**
 - 1. Remove all remaining LEPC disclosure requirements that pose security concerns.
- v. Exercises – **REVISE**
 - 1. Lots of support for the annual notification exercises so consider keeping
 - 2. Revise frequency, scope, and documentation of field and tabletop exercises to be determined by facilities + local emergency response groups (the rule spells out documentation and scope of the exercises and sets a minimum frequency schedule).
- vi. Information Availability to the Public – **RESCIND**
 - 1. Complex security concerns
- b. Compliance audits clarification – clarified that existing self-compliance audits are required for each process.
 - i. EPA has consistently maintained that at least every 3 years, owners or operations must, under the RMP rule, certify that they have evaluated compliance with the prevention program requirements for each covered process. EPA also clearly stated its position within the NRPM preamble for the initial RMP regulation and in response to comment for that rule.

10/02/17